

If all the criteria listed in subsection (a)(1)(A)-(E) of Section 130.1935 are met, then neither a transaction involving the licensing of software nor the subsequent software updates will be considered a taxable retail sale subject to Retailers' Occupation and Use Tax. See 86 Ill. Adm. Code 130.1935. (This is a PLR.)

July 11, 2006

Dear Xxxxx:

This letter is in response to your letter dated August 22, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Thank you for your recent conversations and informal email correspondence discussing the taxability of the Software License Agreement described below. On behalf of our client, COMPANY, we respectfully request the Illinois Department of Revenue ("the Department") to issue a private letter ruling pursuant to 2 Ill. Adm. Code Section 1200.110 with respect to the following factual situation.

General Information

1. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent COMPANY, before the Department of Revenue.

2. This PLR is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the sales tax consequences of the actual business practices of COMPANY.
3. COMPANY is not currently engaged in litigation with the Department in regard to this or any other tax matter. COMPANY is also not under audit with the Department with respect to this issue.
4. The Department has not previously ruled regarding this matter for COMPANY. Neither COMPANY nor FIRM has submitted the same or similar issues to the Department on behalf of COMPANY.
5. COMPANY requests that certain information be deleted from the PLR prior to dissemination to others. COMPANY requests that its name, address, location of its headquarters, description of products being purchased and the name of its representative be deleted.
6. COMPANY knows of no authority contrary to the authorities referred to and cited below.
7. or business reasons, COMPANY may use one or more affiliated entities to enter into the transactions described herein. References to COMPANY may refer to one or more 100% related entities in accordance with COMPANY's business practices.

Statement of Material Fact

On April 7, 2005, COMPANY entered into a substantial Software License Agreement with ABC located in CITY, Illinois. COMPANY has nexus with the State of Illinois and the Software License Agreement is not considered custom software under Illinois Regulation, 86 Ill. Adm. Code 130.1935(c). As discussed below, we believe that the software license meets the requirements for the exemption under 86 Ill. Adm. Code 130.1935(a).

Ruling Requested

We respectfully request that the Department issue a ruling confirming that the Software License Agreement between COMPANY and ABC is exempt under Illinois Regulation, 86 Ill. Adm. Code 130.1935. We have attached a copy of the signed Software License Agreement, a copy of a signed Statement of Work, and a copy of the email correspondence with your informal conclusions of the taxability of the Software License Agreement in question.

Relevant Authorities

Software License Agreements are exempt under Illinois Regulation, 86 Ill. Adm. Code 130.1935(a) which states;

A license of software is not a taxable retail sale if:

- (A) it is evidenced by a written agreement signed by the licensor and the customer;

- (B) it restricts the customer's duplication and use of the software;
- (C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- (D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and
- (E) the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

Conclusions

We believe the Software License Agreement between COMPANY and ABC is exempt under Illinois Regulation, 86 Ill. Adm. Code 130.1935 because a) the Software License Agreement is signed by both parties, b) it restricts ABC from duplication and use of the software, c) it prohibits ABC from licensing, sublicensing or transferring the software to a third party, d) it provides for an archival copy at minimal or no charge, and e) it grants a perpetual license at the end of the license agreement.

Please feel free to contact me with any questions or to discuss any aspect of this ruling request. We appreciate your response on this issue. Thank you for your consideration.

DEPARTMENT'S RESPONSE:

This response to your Private Letter Ruling request is based on our understanding that ABC and COMPANY are separate legal entities. As set forth in the Department's regulation for computer software at 86 Ill. Adm. Code 130.1935(a)(1)(A-E), "[a] license of software is not a taxable retail sale if:

- A) it is evidenced by a written agreement signed by the licensor and the customer;
- B) it restricts the customer's duplication and use of the software;
- C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and

- E) the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.”

Based upon the information provided in the request for a Private Letter Ruling, the Software License Agreement, evidenced by contract number #, satisfies the conditions set forth in 86 Ill. Adm. Code 130.1935(a)(1)(A-E) and thus, is a license of software that is not a taxable retail sale for purposes of the Retailers' Occupation Tax.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Edwin E. Boggess
Associate Counsel

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